

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

State of Ohio

Court of Appeals No. H-06-039

Appellee

Trial Court No. CRI-2005-0359

v.

Michael E. Smith

DECISION AND JUDGMENT ENTRY

Appellant

Decided: June 8, 2007

* * * * *

Russell V. Leffler, Huron County Prosecuting Attorney, for appellee.

K. Ronald Bailey, for appellant.

* * * * *

SINGER, J.

{¶ 1} This is an accelerated appeal from a sentencing judgment of the Huron County Court of Common Pleas.

{¶ 2} In 2005, appellant, Michael E. Smith, pled guilty to two counts of inducing panic, fourth degree felonies, and attempted voyeurism, a misdemeanor. Appellant had called an elementary school, threatening to kidnap and rape a student. Following a

presentence investigation, the trial court sentenced him on the felonies to maximum, consecutive terms of incarceration, 18 months on each count, and an additional 30 days for the misdemeanor.

{¶ 3} In 2006, on appeal, we vacated appellant's sentence pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. *State v. Smith*, 6th Dist. No. H-05-019, 2006-Ohio-4808, ¶ 6. On remand, the trial court, within its discretion, reimposed the same sentence. Appellant now again appeals his sentence, arguing in a single assignment of error that resentencing under *Foster* violates the Ex Post Facto Clauses of both the Ohio and United States Constitutions.

{¶ 4} On the authority of *State v. Coleman*, 6th Dist. No. S-06-023, 2007-Ohio-448, appellant's sole assignment of error is found not well-taken.

{¶ 5} The sentencing judgment of the Huron County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal, pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law and the fee for filing the appeal is awarded to Huron County.

JUDGMENT AFFIRMED

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

State v. Smith
C.A. No. H-06-039

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.